

STATE OF MICHIGAN
COURT OF APPEALS

In re DUANE A. HUBERT, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DUANE A. HUBERT,

Respondent-Appellant.

UNPUBLISHED

October 3, 2000

No. 213572

Macomb Circuit Court

Family Division

LC No. 97-045064-DL

Before: McDonald, P.J., and Sawyer and White, JJ.

MEMORANDUM.

Respondent appeals as of right from his conviction of felonious assault, MCL 750.82; MSA 28.277, entered after a jury trial in family court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent was charged as a juvenile with felonious assault. The charge resulted from an altercation during a roller hockey game. Complainant testified that after he scored a goal against respondent, respondent hit him on the legs with his hockey stick. Complainant testified that after he retaliated by striking respondent on his goalie pads, respondent swung his hockey stick at complainant's head. Complainant sustained a fractured elbow when he raised his arm to protect himself and was struck by the stick. Respondent admitted that he swung the stick at complainant, but denied that he initiated the affray and denied that he aimed for complainant's head. The jury found respondent guilty as charged.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Respondent argues that the evidence was insufficient to support his conviction, in that it failed to establish that he specifically intended to frighten or injure complainant, and because it failed to establish that his hockey stick was used as a dangerous weapon. We disagree on both grounds, and affirm. Specific intent can be express, or it can be inferred from the facts and circumstances surrounding the incident. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). Complainant's testimony that respondent swung his hockey stick at high speed at his head, which the jury was entitled to believe, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), supported an inference that respondent intended to frighten or injure complainant. Furthermore, whether the hockey stick was used as a dangerous weapon was for the jury to determine in light of all the facts and circumstances. CJI2d 17.10(3). The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of felonious assault. *Wolfe, supra*.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White